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| 09/941,939 | 08/30/2001 | Norbert Schipke | A-7591.RNFMP/cat | 6337 |

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EXAMINER

NGUYEN, HANH N

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2834

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/941,939

Applicant(s)

NORBERT SCHIPKE

Examiner

Nguyen N Hanh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 12-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Remarks

1. In view of amendment and telephone interview with Attorney Steward L. Gitler on 07/26/02, the cancellation of claims 1-11 and replacing by claims 12-15 has been acknowledged.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freels et al. in view of Satoh et al. and further in view of Spurlin.

Regarding claims 12, Freels et al. show a backrest element (41 in Fig. 1) comprising at least one vibrator (50): said vibrator comprising an electric motor (52 Fig. 2) and an unbalanced mass (54) driven by said motor and wherein said electric motor is attached to a bracket (78) which is held on a vibrator plate (62) and wherein the vibrator plate is attached directly to a back of said backrest element.

The structure disclosed by Freels et al. fails to show said electric motor is an external-rotor motor with an outer housing which is driven peripherally around a motor axis and with an inner stator which has a motor winding; the outer housing has said unbalanced mass, and wherein said electric motor is attached to a bracket which is

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held on a vibrator plate such that the motor axis includes an angle less than 90° with the vibrator plate.

However, Satoh et al. disclose an external-rotor motor with an outer housing (43) which is driven peripherally around a motor axis and with an inner stator (43) which has a motor winding; the outer housing has said unbalanced mass (57) for the purpose of creating vibration.

Moreover, Spurlin shows the vibrator wherein the electric motor is attached to a vibrator plate such that the motor axis includes an angle less than 90° with the vibrator plate (the bottom plate of the through) for the purpose of creating vibration on both horizontal and vertical direction (Col. 2, lines 65-68).

Since Freels et al., Satoh et al. and Spurlin are in the same field of endeavor, the purpose disclosed by Satoh et al and Spurlin would have been recognized in the pertinent art of Freels et al.

It would have been obvious at the time the invention was made to a person having an ordinary skill in the art to modify Freels et al. by using an external rotor motor with an balance mass on the outer housing and the motor is attached to the bracket such that that the motor axis includes an angle less than 90° with the vibrator plate as taught by Satoh et al. and Spurlin for the purpose of for the purpose of creating vibration on both horizontal and vertical direction.

Regarding claims 13, Freels et al. also show a backrest element wherein said electric motor and said bracket are held in a cover (64) which is connected to said vibrator plate (62).

Regarding claims 14, Satoh et al. also show a backrest element wherein said inner stator is a non-rotating inner stator and internal windings (Fig. 3).

Regarding claims 15, Freels et al. also show a backrest element wherein the backrest element has upholstery (44 in Fig. 1 and Col. 4, 28-29) attached thereto.

Response to Arguments

3. Applicant's arguments with respect to claim 1 and 2 have been considered but are moot in view of the new ground(s) of rejection. The applicant's argument is on the ground that "the structure that The Examiner relies on, disclosed by Satoh et al, does not produce the desired three dimensional vibration produced by Applicant's structure". However, that limitation was not recited in the claims. The applicant's argument is on the ground that "the structure that The Examiner relies on, disclosed by Spurlin, does not disclose or suggest a motor axis defining an angle less than 90 degrees with the vibrator plate". The Examiner respectfully disagrees with the Applicant. The vibrating structure disclosed by Spurlin clearly has an axis of motor defining an angle less than 90 degrees with the vibrator plate (the bottom surface of the trough). The segment of bracket 5 in which the motor axis is perpendicular to, is not the surface it desires to vibrate.

In short, the claims are interpreted as broad as possible and they still do not clearly and distinctly claim the subject matter of the invention. Therefore, the rejection is still deemed proper.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Information on How to Contact USPTO

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh N Nguyen whose telephone number is (703)305-3466. The examiner can normally be reached on Monday through Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nestor Ramirez can be reached on (703)308-1371. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3431 for regular communications and (703)305-3431 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1782.

HNN

September 23, 2002



NESTOR RAMIREZ
SUPERVISORY PATENT EXAMINER
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